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CIA Chief Proposes Shielding Agents From Prosecution

By Ronald J. Ostrow
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Central Intelligence Agency Director William J. Casey has proposed that Congress shield CIA agents from criminal prosecution while they are on legitimate missions, a proposal that Department of Justice intelligence experts fear would sanction lawbreaking, it was learned yesterday.

Casey made the proposal in a letter last month to Attorney General William French Smith, who has not yet decided whether to incorporate it in the administration's efforts to revise the federal criminal code.

But the Justice Department's office of intelligence policy review has strongly recommended against supporting Casey, saying his proposal would permit CIA agents to "freely engage" in otherwise illegal activities without authorization or approval from the department.

On the other hand, CIA officials said the proposed change would give the agency no more latitude than it already enjoys under current law and that it wanted only to "maintain our capabilities to do the kinds of things we do abroad."

Casey's proposal would add this language to the federal criminal code:

"Nothing in [federal criminal law] shall be construed to create criminal liability for the conduct of intelligence activities by a federal public servant that are authorized and conducted in accordance with the Constitution and applicable federal statutes, executive orders, presidential directives and department or agency regulations which regulate the conduct of intelligence activities."

As an example of the kinds of violations this could lead to, according to Smith's intelligence policy review office, a CIA source authorized to collect foreign intelligence outside the United States might participate in an international narcotics transaction or bribe a foreign official to maintain his cover.

Under Casey's [...] not be punished in [...]

The timing of C[...] its controversy. It [...] after President Rea[...] restrictions on the nation's intelligence agencies and when the CIA is under scrutiny for possible involvement of some of its operatives and ex-agents in training Libyan terrorists.

Stanley Sporkin, the CIA's general counsel, said that he regarded the proposal as a technical, legal matter and not a policy change. "It has not been expressed to me that any branch of the government has a concern with this," Sporkin said.

But Richard K. Willard, formerly Smith's counsel for intelligence policy, was said to have warned the attorney general that Casey's proposal would be misinterpreted by the public and Congress. According to colleagues, Willard said that the Casey proposal would sow the seeds for serious and continuing misunderstanding between the Department of Justice and the CIA.

Sporkin said that the CIA's legal staff drew up the proposal in response to legislation pending in Congress to revise the federal criminal code. The legislation wold expand the extraterritorial jurisdiction of the United States.

Casey said in his letter to Smith that the criminal code revision legislation lacks "a definitive statement" on the relationship between the code and the conduct of intelligence activities.

"The absence of such a statement combined with the expanded extraterritorial federal jurisdiction that the legislation provides creates uncertainties that could seriously impair intelligence efforts," Casey wrote.

He said that if the proposed code were adopted, an agent carrying out legitimate intelligence activities would have standing between him and criminal prosecution only the discretion of a prosecutor and "the common-law defense of exercise of public authority."

Sporkin said the CIA proposal represented "an abundance of caution. We want to be sure we're not inadvertently involved in a violation where one of our agents has fully complied with all aspects of American law."

Several Justice Department officials discussed the Casey proposal only on condition that they not be identified.

One official called the proposal "harebrained." Another said the CIA had "overreacted."